

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERNEST MARTIN,	)	
	)	Civil Action
Plaintiff	)	No. 12-cv-03665
	)	
v.	)	
	)	
CITY OF READING;	)	
READING POLICE DEPARTMENT;	)	
WILLIAM HEIM, CHIEF OF POLICE OF	)	
THE READING POLICE, individually	)	
and in his official capacity;	)	
OFFICER BRIAN ERRINGTON, individually	)	
and in his official capacity,	)	
CAPTAIN DAMON KLOC, individually and	)	
in his official capacity,	)	
JOHN DOE 1 through JOHN DOE 7;	)	
PENNSYLVANIA STATE TROOPER MICHAEL	)	
PAVELKO, individually; and	)	
JOHN DOE 8 and JOHN DOE 9,	)	
	)	
Defendants	)	

**O R D E R**

NOW, this 30<sup>th</sup> day of September, 2013, upon  
consideration of the following documents:

- (1) [Defendant] Michael Pavelko's Motion to Dismiss, which motion was filed January 28, 2013 (Document 31) ("Motion to Dismiss of Trooper Pavelko"); and
- (2) Defendants City of Reading, Chief William Heim, Officer Brian Errington, and Captain Damon Kloc's Motion to Dismiss Plaintiff's Amended Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), which motion was filed January 28, 2013 (Document 32) ("Motion to Dismiss of Reading Defendants");

upon consideration of the Complaint, matters of public record<sup>1</sup>, plaintiff's responses to the motions, and the briefs of the parties; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the Motion to Dismiss of Trooper Pavelko is granted in part and denied in part.

IT IS FURTHER ORDERED that the Motion to Dismiss of Trooper Pavelko is granted to the extent that it seeks to dismiss plaintiff's Pennsylvania state-law claims against defendant Trooper Pavelko for defamation, false light, and intentional infliction of emotional distress based upon sovereign immunity.

IT IS FURTHER ORDERED that all claims in Count VI of the Amended Complaint against defendant Trooper Pavelko are dismissed.<sup>2</sup>

IT IS FURTHER ORDERED that the Motion to Dismiss of the Reading Defendants is granted in part and denied in part.

IT IS FURTHER ORDERED that Motion to Dismiss of the Reading Defendants is granted as unopposed to the extent that it

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<sup>1</sup> The matters of public record which were considered are the docket entries and a copy of the transcript of Plea and Sentence in the related state-court criminal action in Commonwealth of Pennsylvania v. Ernest Martin, Docket No. CP-06-CR-000498-2012 in the Court of Common Pleas of Berks County, Pennsylvania.

<sup>2</sup> Count VI of the Amended Complaint alleges defamation, casting in a false-light invasion of privacy, and intentional infliction of emotional distress under Pennsylvania state law against all defendants. Only those claims against Trooper Pavelko are dismissed from the Amended Complaint. Those claims against the remaining defendants remain in Count VI.

seeks to dismiss plaintiff's claims for violation of his rights under the Eighth Amendment to the United States Constitution.

IT IS FURTHER ORDERED that Count II is dismissed from the Amended Complaint in its entirety, and Count III is dismissed from the Amended Complaint to the extent it asserts a claim based upon the Eighth Amendment.

IT IS FURTHER ORDERED that the within motions are denied in all other respects.

IT IS FURTHER ORDERED that defendants shall have until October 21, 2013 to answer the Amended Complaint.

BY THE COURT:

/s/ James Knoll Gardner\_\_\_\_\_  
James Knoll Gardner  
United States District Judge